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TO:	FROM:
Examiner Azizal Chadhoury	Brett A. Carlson (Reg. No. 39,928)
COMPANY:	DATE:
USPTO	DECEMBER 5, 2005
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
(571)-273-8300	10
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
	ATTN: Brett Carlson
RE:	REFERENCE NUMBER:
Notice of Appeal/Request for Review	09/606,786
NOTES/COMMENTS:	

INTENDED FOR ENTRY

ART UNIT 2145

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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) WNF - B. Carlson	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage or first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>12/5/2005</u> Signature <u>[Signature]</u> Typed or printed name <u>Brett A. Carlson</u>		Application Number <u>09/606,786</u>	Filed <u>06/28/2000</u>
		First Named Inventor <u>Murphy</u>	Art Unit <u>2145</u>
		Examiner <u>Chandhury, A.</u>	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the		<u>[Signature]</u> Signature	
<input type="checkbox"/> applicant/inventor.		<u>Brett A. Carlson</u> Typed or printed name	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/95)		<u>480/385.5069</u> Telephone number	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>39,928</u>		<u>December 5, 2005</u> Date	
<input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>39,928</u>			
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> Total of <u>3</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Murphy et al. Group Art Unit: 2145
Serial No.: 09/606,786 Examiner: Choudhury, Azizul Q.
Filed: June 28, 2000 Confirmation No.: 6327
For: *METHOD AND APPARATUS FOR MAINTAINING A
COMPUTER SYSTEM*
Attorney Docket No.: WNF/B. Carlson

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)

I hereby certify that this correspondence is being transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (371)-273-8300.

on December 5, 2005. Signature: 
Brett A. Carlson, Reg. No. 39,928

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

The Final Office Action continues to assert art that simply fails to describe each and every limitation of the present claims. Because we earnestly believe that our claims contain several limitations that are not met by the reference cited in the Final Office Action, we hereby request a pre-appeal brief review of this matter in accordance with the Official Gazette Notice published on 12 July 2005.

We are aware that this Application has required a significant amount of work by the Examiner. While this Application has undergone significant prosecution to date and a large number of claims remain pending, this Request addresses a single question:

Does the Chang Reference disclose our claimed limitations of (1) determining the attributes of a client computer with an application provided by a server computer before the client computer has booted its local operating system; and (2) automatically selecting one of a plurality of instruction sets stored on the server computer for said client computer based upon the attributes of said client computer determined by said preboot application provided by the server?

Upon review of the various Office Actions and of the reference itself, we are confident that at least these aspects of our claims are not found in the cited reference.

I. Brief Summary

Our invention relates to various systems and techniques for remotely maintaining a number of personal computers interconnected by a network. Broadly speaking, a server computer system provides an "attribute determination" program to each client computer being maintained to determine the particular attributes (e.g. computer brand, model, operating system, hardware capabilities, etc.) of that client computer. The attribute determination program reports these attributes back to the server, which then selects a set of management instructions based upon the particular attributes and provides these instructions to the client computer for subsequent execution. Each of these steps is performed without booting the local operating system on the client computer, thereby allowing the server to provide powerful diagnostic and repair features. Claim 1 is reproduced below for convenience:

1. *A method of remotely maintaining a client computer from a server computer, wherein the client computer comprises a plurality of attributes, a network interface card (NIC) and a local operating system, the method comprising the steps of:*
 - providing a preboot attribute determination application from the server computer to the client computer via the network interface card prior to said client computer loading said local operating system;*
 - determining said plurality of attributes of said client computer with the preboot attribute determination application executing on said client computer prior to said client computer loading said local operating system;*
 - receiving said plurality of attributes from said client computer at the server computer;*
 - automatically selecting one of a plurality of management instruction sets stored on said server computer for said client computer, wherein said one of said plurality of management instruction sets is selected by said server computer based upon said plurality of attributes of said client computer determined by said preboot attribute determination program; and*
 - providing said one of said plurality of management instructions from said server computer to said client computer to thereby allow said client computer to execute said one of said plurality of management instruction sets at said client computer prior to loading said local operating system.*

We strongly believe that at least the highlighted "determining" and "automatically selecting" steps of claims 1 and 42 (as well as various other claims) are not disclosed in the prior art of record. Although we have explained our views on several opportunities (most recently in the Response to Office Action dated April 7, 2005), the Office continues to reject

claims 1, 42 and others under 35 U.S.C. § 102(b), citing US Patent No. 5,680,547 ("Chang"). While we acknowledge that the Chang reference does describe a pre-boot file transfer environment (such as the PXE specification that is described at length in our specification¹), the cited reference does not disclose the further details of determining the attributes of the client computer and automatically selecting a set of instructions based upon the determined attributes. To the contrary, Chang is silent as to these features, and therefore falls short of providing the disclosure required to support the Section 102(b) rejection set forth in the Final Office Action.

II. The Chang Reference

As we have noted previously,² the Chang reference cited against Applicant's claims describes a basic implementation of the pre-boot execution environment (PXE) that was originally developed to allow network interface cards (NICs) to obtain a boot program for a computer over a network. In contrast to the presently-claimed invention, however, Chang only contemplates administration of "predetermined" computer resources that have been previously known to the server.³ In the Chang system, an administrator manually enters each client computer into an "access control list database" (ACL-DB, shown as element 11a in Chang's FIG. 1), and all access to server resources is contingent upon the server authenticating the client computer with the ACL-DB.⁴ When the computer is later powered up, the computer transmits its NIC address to the server for verification.⁵ Chang's FIG. 3B, for example, expressly shows that the network connection between the client and server is "cut" if the client's NIC address is not recognized in an access control list database.⁶ Chang also expressly states that its preboot process is "controlled by a system administrator,"⁷ further emphasizing that only computer systems that are known to a human operator are considered by the Chang system. Stated another way, Chang simply provides a static set of instructions to a client computer based upon the NIC address entered in the server database; the reference contains no mention whatsoever of automatically selecting instructions based upon the particular attributes of the client machine, nor does it provide a mechanism for determining the attributes of the client machine.

¹ See, for example, page 8, line 24 through page 9, line 3 of our Specification.

² Please see our Remarks at page 15-16 of the Response filed April 7, 2005 for a detailed description of the Chang reference and various differences between that reference and the present claims.

³ See, e.g., Chang at col. 5, lines 30-32, and the preambles of each independent claim.

⁴ See, e.g., Chang at col. 4, lines 52-60.

⁵ Chang at col. 6, lines 56-58.

⁶ See also Chang at col. 6, lines 56-63.

III. The Final Office Action

Although our application contains numerous claims that are each patentable for their own reasons, for purposes of this Request we will simply focus on the particular language of claim 1. The issues presented with regard to claim 1, however, apply equally well to the other pending claims.

Turning now to the detailed rejection of our claim 1 found in the Final Office Action, the Examiner initially cites col. 2, lines 44-54 of Chang⁸ as disclosing our "attribute determination program" limitation, claiming that "the claimed application must be present since a check is done of the client to determine if it is booted or not". This statement fails to take into account that our claim recites that the application is provided by the server to the client. That is, even if Chang does determine whether the client is booted or not, this simple check does not anticipate "determining the attributes of the client with a client attribute determination application provided from the server to the client", as recited in our claim 1 and elsewhere.

The Office Action makes numerous claims that our limitations are "inherent" in the Chang reference, without providing any adequate basis for such statements. As an example, the Final Office Action⁹ asserts that "it is inherent that the application contains the claimed management instructions, as well as selects the appropriate management instructions for each client machine", ignoring our express recitation that the instructions are selected based upon the determined attributes of the client computer, a feature clearly not present in the Chang reference. Indeed, the Final Office Action is entirely silent as to this feature of our claims. As a result, the actual rejection contained within the Final Office Action simply makes broad reference to column 2, lines 44-54 of the Chang reference, claiming that our claim elements "are inherent" or "must be present" from this disclosure, without providing specific citation to the actual features of the reference that disclose each and every limitation of our claims. In fact, Chang does not disclose the various features of our claimed inventions, as described above.

The Final Office Action further summarizes the rejections at pages 67-68, stating that Chang's column 2 discloses the various features found within our 100+ claims. In this section, the Examiner states that Chang discloses pre-boot file transfer, which is asserted to

⁷ See, e.g. Chang at Abstract, last sentence and col. 2, lines 50-52.

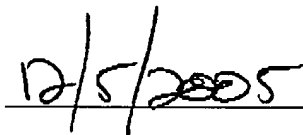
⁸ The only portions of Chang cited in the entire rejection of claim 1 are col. 2 lines 7-19 and 44-54.

⁹ At page 4, line 7.

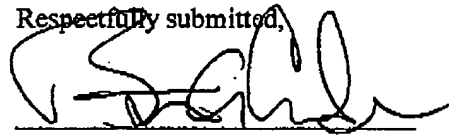
be "equivalent" to our "claimed traits of receiving attributes, selecting management instruction sets and providing management instruction sets". Once again, however, this statement does not include the full breadth of our claim language. Even to the extent that Chang is able to disclose pre-boot file transfer between a client computer and a server computer, the reference in no way discloses *determining client computer attributes with an application provided by the server*, nor does the reference disclose *automatically selecting a list of instructions based upon the determined attributes*. Because the reference does not disclose the actual limitations recited in our claim, the rejection under Section 102(b) cannot be maintained.

We therefore request that the Office review the Final Office Action and determine whether US Patent No. discloses our claimed limitations of (1) *determining the attributes of a client computer with an application provided by a server computer before the client computer has booted its local operating system*; and (2) *automatically selecting one of a plurality of instruction sets stored on the server computer for said client computer based upon the attributes of said client computer determined by said preboot application provided by the server*. Although no additional fees or extensions of time (other than the one month extension of time addressed elsewhere) are believed to be required, Applicant requests that the Commissioner grant any extension and/or debit any fees (including any fees for additional claims or extensions of time) from Deposit Account No. 50-2091 for entry of this Response and/or to avoid abandonment of this Application. Should the Examiner have any questions or wish to discuss this application in person, Applicant's counsel would welcome a call from the Examiner at (480) 385-5069.

Dated



Respectfully submitted,



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